

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

United States Court of Appeals

76-1526

for the Second Circuit

B
P/s

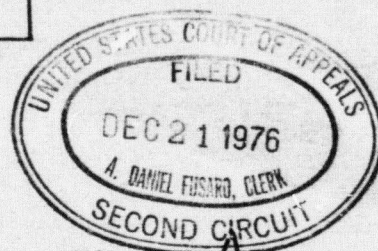
United States of America,
Plaintiff - Appellee.

-against-

George R. Baker,
Defendant - Appellant.

Docket No. 76-1526

Appeal from
U.S. District Court
Eastern District of
New York



Brief for Appellant and Appendix

Paul Barahal
Attorney for George R. Baker
86 Fox Boulevard
Massapequa, New York 11758

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Issues.....	1
Preliminary Statement.....	2
Statement of the Case.....	3
Argument-	
Point I.....	6
Point II.....	6
Point III.....	7
Conclusion.....	8

TABLE OF AUTHORITIES CITED

Bruton v U.S., 391 U.S. 123 (1968).....	6
Delli Paoli v U.S., 352 U.S. 232 (1957).....	6
Federal Rules of Criminal Procedure-	
Rule 29.....	6

ISSUES

1. Did the Trial Court err in admitting the statement of Rose Marie Baker into evidence against the defendant George Baker over defendant's objection?
2. Did the Trial Court err in denying defendant's motions for judgment of acquittal at the close of the Government's case and at the end of the trial?
3. Did the Trial Court err in refusing to charge, as requested by the defendant, that the Government must establish that the conspiracy actually existed on or before September 15, 1974 as charged in the indictment?

PRELIMINARY STATEMENT

The within appeal by the defendant appellant George Baker is of a conviction after a trial in the United States District Court for the Eastern District of New York by the Honorable George C. Pratt and a jury, of Count One of an eight (8) count indictment, numbered 76 CR 380.

Count One of the indictment alleges that "commencing on or before the 15th day of September, 1974 and continuing up to and including the 9th day of April, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants Rose Marie Baker and George Baker and other persons unknown did agree, combine and conspire to defraud the United States and an agency thereof, the Social Security Administration, by obtaining and aiding in the obtaining of payments of false, fictitious and fraudulent claims in that they did claim payments and did obtain payments on the claim of the defendant Rose Marie Baker under Title 42 U.S.C. section 402, knowing that such claim was false, fictitious and fraudulent and that they were not entitled to such payments".

STATEMENT OF THE CASE

On June 3, 1976 the defendant George Baker and his wife Rose Marie Baker were indicted under indictment number 76 CR 380 on an eight (8) count indictment.

On August 23, 1976 the defendant George Baker was tried separately under count one of the indictment and was found guilty on August 25, 1976.

Count one of the indictment alleges that "commencing on or before the 15th day of September, 1974 and continuing up to and including the 9th day of April, 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants Rose Marie Baker and George Baker and other persons unknown did agree, combine and conspire to defraud the United States and an agency thereof, the Social Security Administration, by obtaining and aiding in the obtaining of payments of false, fictitious and fraudulent claims in that they did claim payments and did obtain payments on the claim of the defendant Rose Marie Baker under Title 42 U.S.C. section 402, knowing that such claim was false, fictitious and fraudulent and that they were not entitled to such payments".

The indictment further alleges that a number of overt acts were committed in furtherance of the said conspiracy. However, the only overt act attributed to the defendant George Baker is that "on or about the 15th day of September, 1974,

the defendant George Baker sailed a boat to the Fire Island Inlet, within the Eastern District of New York, and abandoned the boat in the water". All other overt acts alleged in the indictment were attributable to the co-defendant Rose Marie Baker.

At the trial, it was established that the defendant George Baker had abandoned his boat and disappeared on September 15, 1974 (transcript page 59).

It was further established at the trial that Rose Marie Baker filed a Social Security claim on June 16, 1975 based on the presumed death of the defendant George Baker and received Social Security checks as a result of that claim commencing on July 25, 1975 (transcript pages 85-91).

During the trial, a statement made by Rose Marie Baker was admitted into evidence over the defendant George Baker's objection (transcript pages 63-66). Among other things, Rose Marie Baker had said in her statement that "We both were concerned about receiving the Social Security benefits, We felt we had committed a Federal crime and thought we should contact an attorney, rather than going direct to Social Security." (transcript page 65, lines 18-21).

In the opening address by the United States Attorney, he stated that an agreement was entered into to defraud the government while these checks were being received (transcript page 49, lines 11-14) despite the fact that the indictment charged that the conspiracy was entered into on or before

September 15, 1974.

The Trial Court refused to charge as requested by the defendant that the Government must establish that the conspiracy actually existed on or before September 15, 1974.

During the entire course of the trial, no evidence was presented of any communication or contact between the defendant George Baker and his codefendant wife Rose Marie Baker during the period of time between September 15, 1974 (the date of defendant George Baker's disappearance) and June 16, 1975 (the date that Rose Marie Baker filed her Social Security claim).

In addition, no evidence was presented of any communication between the defendant George Baker and Rose Marie Baker prior to September 15, 1974 regarding the alleged conspiracy.

At the end of the Government's case, the defendant moved for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure (transcript pg.200, lines 17-18). The Trial Court denied defendant's motion (transcript pg.223, lines 4-5).

At the end of the trial, defendant moved that the verdict be set aside and that the motion for judgment of acquittal be granted and the Trial Court denied this motion (transcript pg. 305, lines 1-4).

CARAVAN BOND

ARGUMENT

POINT I

The Trial Court erred in admitting the statement of Rose Marie Baker into evidence against the defendant George Baker over defendant's objection (transcript pg.65, lines 18-21).

Rose Marie Baker's statement constituted a confession at least in part,: "We both were concerned about receiving the Social Security benefits. We felt we had committed a Federal crime and thought we should contact an attorney, rather than going direct to Social Security." (transcript pg. 65, lines 18-21).

The use of one defendant's confession as evidence against a codefendant violates the codefendant's right of confrontation where the confessor refused to take the stand. (Delli Paoli v U.S. 352 U.S. 232, Bruton v U.S. 391 U.S. 123)

POINT II

The Trial Court erred in denying defendant's motion for judgment of acquittal at the close of the Government's case and at the end of the trial (transcript pg. 213, lines 4-5 and transcript pg 305, lines 1-4).

Such motion should be granted where "the evidence is insufficient to sustain a conviction..." (Rule 29, Federal Rules of Criminal Procedure).

The evidence presented at the trial was insufficient to sustain the conviction of the defendant George Baker.

The evidence showed that the defendant George Baker abandoned his boat on September 15, 1974 and that on June 16, 1975 his wife Rose Marie Baker filed for Social Security benefits based on the defendant's presumed death.

There was no evidence presented of any contact or communication between the defendant and his wife between the aforementioned dates.

There was no evidence presented that the defendant George Baker conspired with his wife to defraud the Social Security Administration.

POINT III

The Trial Court erred in refusing to charge, as requested by the defendant, that the Government must establish that the conspiracy actually existed on or before September 15, 1974 as charged in the indictment.

The indictment charged that on or about the 15th day of September, 1974, the defendant George Baker abandoned his boat in the water.

Aside from the aforesaid act of abandoning his boat, there were no other acts attributable to the defendant George Baker which would tend to connect him with the alleged conspiracy.

CONCLUSION

The defendant concludes that his judgment of conviction should be reversed and that his motion for judgment of acquittal should be granted on the ground that the admissible evidence presented at trial was insufficient to sustain his conviction of the crime charged in Count One of the indictment and that his guilt was not established beyond a reasonable doubt.

CARAVAN BOND

BACK CONTENT

APPENDIX

CONTENTS OF APPENDIX

Indictment.....	1
(49, lines 11-14) Opening Statement-U.S. Attorney..	5
(59) Gamertsfelder-direct.....	6
(63-66) Gamertsfelder-direct.....	7
(65, lines 18-21) Gamertsfelder-direct.....	9
(85) Barone-redirect.....	11
(85-91) Salzman-direct/cross.....	11
(200, lines 17-18) Colloquy.....	18
(223, lines 4-5) Colloquy.....	19
(305, lines 1-4) Colloquy.....	20
(265-290) Charge to Jury.....	21

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

1

----- X

UNITED STATES OF AMERICA

- against -

ROSE MARIE BAKER,
GEORGE BAKER,

Defendants.

----- X

THE GRAND JURY CHARGES:

Smith J
I N D I C T M E N T

Cr. No. 76CR386
(Title 18, U.S.C., §§286,
1001 and §1341)

6/3/76

COUNT ONE

Commencing on or before the 15th day of September 1974 and continuing up to and including the 9th day of April 1976, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ROSE MARIE BAKER and GEORGE BAKER and other persons unknown did agree, combine and conspire to defraud the United States and an agency thereof, the Social Security Administration, by obtaining and aiding in the obtaining of payments of false, fictitious, and fraudulent claims in that they did claim payments and did obtain payments on the claim of the defendant ROSE MARIE BAKER under Title 42 U.S.C. §402, knowing that such claim was false, fictitious and fraudulent and that they were not entitled to such payments.

In furtherance of said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendants ROSE MARIE BAKER and GEORGE BAKER committed the following:

O V E R T A C T S

1. On or about the 15th day of September 1974, the defendant GEORGE BAKER sailed a boat to the Fire Island Inlet, within the Eastern District of New York, and abandoned the boat in the water.

2. The defendant ROSE MARIE BAKER did receive in the

mail at Box 197, Beeville, Texas, on or about the dates indicated, the following United States Treasury checks and did negotiate these checks:

<u>DATE</u>	<u>CHECK NUMBERS</u>	<u>AMOUNT</u>
December 3, 1975	61866701	\$509.50
December 3, 1975	61866702	\$101.90
January 3, 1976	14718899	\$509.50
January 3, 1976	14718900	\$101.90
February 3, 1976	66348668	\$509.50
February 3, 1976	66348669	\$101.90

3. Counts Two through Seven are hereby alleged and incorporated as additional overt acts in furtherance of the conspiracy. (Title 18 U.S.C. §286).

COUNT TWO

On or about the 15th day of June, 1975, within the Eastern District of New York, the defendant ROSE MARIE BAKER did knowingly and wilfully make false, fictitious and fraudulent statements and representations about a matter within the jurisdiction of an agency of the United States in that she did make claims for payment under Title 42 U.S.C. §402 to the Social Security Administration wherein she stated that her husband, defendant GEORGE BAKER, was deceased when, in fact, she knew him to be alive. (Title 18 U.S.C. §1001).

COUNTS THREE THROUGH SEVEN

On or about the dates herein below indicated, within the Eastern District of New York at 5 Bay Drive, Babylon, New York, for the purpose of executing a scheme and artifice to defraud the United States and to obtain money by means of false and fraudulent pretenses, representations and promises and in furtherance thereof, the defendant ROSE MARIE BAKER did take and receive from the United States Postal Service checks

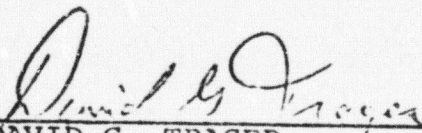
issued by the Social Security Administration as hereinafter indicated:

COUNT	CHECK #	AMOUNT	DATE
THREE	5479138	\$4753.00	July 25, 1975
	5479139	\$1205.60	July 25, 1975
FOUR	56506684	\$ 509.50	August 2, 1975
	56506685	\$ 101.90	August 2, 1975
FIVE	5531979	\$ 509.50	September 3, 1975
	5531980	\$ 101.90	September 3, 1975
SIX	57062665	\$ 509.50	October 3, 1975
	57062666	\$ 101.90	October 3, 1975
SEVEN	9950393	\$ 509.50	November 3, 1975
	9950394	\$ 101.90	November 3, 1975

(Title 18 United States Code, Section 1341)

A TRUE BILL.

FOREMAN



DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No. _____

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

ROSE MARIE BAKER, GEORGE BAKER,

Defendants.

INDICTMENT

(T. 18 U.S.C., §286, §1001 and §1341)

A true bill,

Foreman.

Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Bail, \$_____

Douglas J. Kramer, AUSA ^{CPD 902-462}
330-7028

1 Opening - U.S. Attorney 49 5
2 to do something about it when they had a chance
3 to do something about it. But they just couldn't
4 get a chance to do something about it.

5 Now, you will have to judge as finders of
6 the facts whether the facts taken in conjunction
7 with these statements that the evidence will show
8 are false, exculpatory statements - - in fact, to
9 clear themselves - - turn out to be statements
10 which I think the evidence will show you doesn't
11 clear them. But shows Mr. Baker at some time
12 while these checks were being received, entered
13 into an agreement with his wife to defraud the
14 Government. It's as simple as that. There is a
15 lot of evidence though you're going to hear that
16 is going to seem somewhat disconnected in that no
17 single incident will have any overwhelming proof
18 in this case. So, I ask you to keep in mind that
19 you will be getting a lot of evidence coming in
20 from various angles, from various people that may
21 not seem to fit together until the end of the case.
22 You will see how this puzzle all makes a very clear
23 picture of the husband and wife needing money and
24 deciding on a relatively unsophisticated scheme,
25 the husband disappears and seeing what they can

and my mother's maiden name is Eva Wolfe. I am married to Rosemarie Meraglia Baker. I married her 12/19/60 at Jamaica, New York. I was in the Naval Reserve 1957 - 1963. My serial number is 4751171.

My health was poor in 1971 or 1972. My stomach was bothering me and medical opinion indicated possible cancer and/or an operation. I had to stop work in 1973 because of my health. As September 1974 approached I depressed and had contemplated suicide. I had taken out life insurance policies in 1971 or 1973. I had had a boating accident, when the motor had stopped about or three years before September of 1974. When I went out in the boat on September 15th, 1974, I went with the intent of disappearing. I took the boat to the middle of the bay and swam ashore. There was a considerable Coast Guard investigation following.

After September 15th, 1974 I went to Watson, Arkansas and worked there as a welder for a large farmer whose name I don't remember. I used the name of Edgar Baxter. My wages were paid in cash and no records were kept. I was there about four months.

Jila Bend, Arizona, was the next location where I resided. I worked there on a ranch as a cowboy using the name Edgar Baxter. I was there about two and a half

1 Do you wish to see it before it's marked,
2 Mr. Barahal?

3 MR. BARAHAL: Yes, I do, your Honor.

4 (Handed.)

5 MR. KRAMER: That's 804B3, your Honor, I'm
6 sorry.

7 MR. BARAHAL: Your Honor, my objection
8 stands on the grounds of hearsay.

9 THE COURT: Overruled on those grounds.

10 Let it be marked in evidence.

11 THE CLERK: Government's Exhibit number 5,
12 marked and received into evidence.

13 MR. KRAMER: With the Court's permission
14 may Mr. Gamertsfelder read this to the jury?

15 THE COURT: He may.

16 BY MR. KRAMER:

17 Q Will you please read that statement to the
18 jury?

19 A "My full name is Rosemarie Mergelia Baker. My
20 birthday is 9/2/33. I was born Bronx, New York. My
21 father's name was Mario Mergelia and my mother's name
22 was Josephine Felisi.

23 In early 1974, my husband was having a great deal
24 of trouble with his stomach. He would not talk about
25

Gamertsfelder - direct

64

his condition and he would get mad at me if I asked him about his stomach. I applied for welfare sometime in 1974 before the disappearance in 1974.

I had no idea that my husband was thinking about suicide or that he was planing to disappear.

On September 15th, 1974, I drove my husband to the Captree Boat Basin at about 5:00 o'clock. It was my understanding that he was to pick up our boat and intended to go fishing and then bring the boat to our house which is on the water. After he did not come home I called the Coast Guard at about 3:00 A.M. on September 16th, 1974. The Coast Guard called back at 5:00 A.M. and told me that they had found a boat drifting and asked me to come down and identify the boat. I went down to see the boat and identified it as ours. The Coast Guard searched for several days and found nobody. I also contacted the Suffolk County Police and they investigated.

After the Coast Guard completed their investigation, after about two months, I concluded that my husband was dead, but I still held out some hope that he might be alive. I told the children that their father had gone away. I did tell our oldest daughter that their father possibly drowned.

1
2 I consulted an attorney, Floyd Sarisohn. The
3 spelling may be incorrect. He advised me to contact
4 our insurance companies and make proper claims. He
5 contacted the insurance companies for me. The insur-
6 ance companies wrote back saying they wouldn't pay
7 without a body. He took the case into Surrogate Court
8 and the court declared my husband legally dead.

9 Sometime in the summer of 1975 I contacted
10 Social Security and filed claim. I submitted to them
11 a Coast Guard report which indicated that George Baker
12 is presumed drowned and death certificate will follow.
13 I had no further contacts from Social Security after
14 the initial interview until today.

15 My husband phoned me sometime in the latter part
16 of 1975 or 1976. I was very surprised to hear from
17 him.

18 We both were concerned about receiving the Social
19 Security benefits. We felt we had committed a Federal
20 crime and thought we should contact an attorney, rather
21 than going direct to Social Security.

22 We did contact an attorney in Texas regarding
23 taking the motor home out of state. I was concerned
24 because it was used as collateral for a new car purchase.
25 Corpus Christi National Bank held the note on the car.

Gamertsfelder - direct

66

1 We knew that we were leaving Texas and chose to con-
2 tact an attorney rather than a bank to avoid a has-
3 sle. We did not talk to this attorney about the So-
4 cial Security matter, because, again we were preparing
5 to leave.
6

7 We came to Ohio and subsequently contacted an
8 attorney in Mansfield and were arrested . . ."

9 And that's signed by Rosemarie Baker.

10 Q Thank you.

11 Now, Mr. Gamertsfelder, I'm going to show you
12 Government's Exhibit 21A and 21B for identification
13 and ask you whether you can identify these records?

14 A Yes, sir. This is a copy of a change of address
15 input form that is prepared before a message is sent
16 via teletype to change a person's address on a Social
17 Security check. The accompanying form is the hard copy
18 produced by the teletype machine, after the message has
19 in fact been sent.

20 Q Now, the first form, 21A, the change of
21 address form, is that a routine form used by Social
22 Security?

23 A Yes, it is.

24 Q And it's a matter of routine practice for
25 them to fill out the forms when a change of address is

1 Barone - redirect

85

2 MR. BARAHAL: I have no further questions.

3 THE COURT: Any redirect?

4 MR. KRAMER: Yes.

5 REDIRECT EXAMINATION

6 BY MR. KRAMER:

7 Q Is there any indication that you have or
8 anything to your knowledge that you know of as to
9 whether or not only Mr. Baker had this card or other
10 people had this card besides Mr. Baker?

11 A No, I don't really know.

12 Q His wife might have also had a card?

13 A His wife could have used the card, she has the
14 same surname.

15 Q You said there was no loss of reported card?

16 A No, there wasn't.

17 THE COURT: Thank you, Miss Barone, you may
18 step down.

19 (Witness excused.)

20 MR. KRAMER: Miss Salzman.

21 B A R B A R A S A L Z M A N, called as a witness
22 on behalf of the Government, having been first
23 duly sworn, was examined and testified as
24 follows:

25 DIRECT EXAMINATION

Salzman - direct

86

BY MR. KRAMER:

Q Miss Salzman, by whom are you employed?

A Social Security Administration.

Q And what are your duties?

A Excuse me?

Q What are your duties?

A I'm an operations supervisor.

Q Miss Salzman, I'm going to show you Government's Exhibit 1 for identification - -

MR. BARAHAL: Your Honor, I'll stipulate Mrs. Baker filed the Social Security application on June 16th of 1975.

THE COURT: Is that exhibit 1?

MR. KRAMER: Exhibit 1 and 2.

We offer these into evidence and then have some testimony - -

THE COURT: Let them be marked in evidence.

THE CLERK: Government's Exhibit 1 and 2 marked and received in evidence.

BY MR. KRAMER:

Q Now, I'm going to give you Government's Exhibit 1 and 2 in evidence.

Referring to Government's Exhibit 1, that is a claim for Social Security benefits, is it not?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Yes.

Q Under what program?

A Mother's insurance benefits.

Q And who made that claim?

A Mrs. Baker.

Q What is the program that claim is made for,
what is the nature of that program?

A Mother's insurance benefits are payable to a widow when she has minor children in her care, when there is a loss of income due to the death of the husband, and the husband would have to meet certain work requirements.

Q Would it be unusual to receive a claim such as that, from the deceased?

A From the deceased?

Q Yes.

A He could not do that.

Q He couldn't do it? He's have to be dead.

A Yes.

Q Now, on that claim, is it claimed that a person is deceased?

A Yes.

Q And on that particular claim in front of you, Government's Exhibit 1, who is it claimed is the

1 Salzman - direct

83

2 deceased?

3 A George R. Baker.

4 Q Looking at exhibit 2, what program were
5 those benefits?

6 A Surviving child's insurance benefits.

7 Q What's the nature of that program?

8 A Very similar to the first, except it's payable
9 to the children of the deceased person who has worked
10 under the Social Security program.

11 Q Who made that claim?

12 A Rosemaire Baker.

13 Q When were those claims made? Can you tell
14 from the form?

15 A June 16th, 1975.

16 Q Where were they received?

17 A This says Babylon, New York, 11702.

18 Q Both claims then were received at the Babylon
19 Office of the Social Security Administration?

20 A Yes.

21 Q I'm going to show you, in just a moment,
22 Government's Exhibit 3 for identification - -

23 MR. BARAHAL: Your Honor, I will also stipu-
24 late that Rosemarie Baker received certain Social
25 Security checks as a result of this claim.

1 Salzman - direct

89

2 THE COURT: Are those the checks in ex-
3 hibit 2 - - exhibit 3?

4 MR. BARAHAL: That is correct.

5 MR. KRAMER: Yes.

6 THE COURT: Any objection?

7 MR. BARAHAL: I have no objection and I
8 would stipulate she received those checks.

9 THE COURT: All right. Let the exhibit be
10 marked.

11 THE CLERK: Government's Exhibit 3A to P
12 marked and received in evidence.

13 BY MR. KRAMER:

14 Q Now, I'm going to show you a packet of six-
15 teen checks marked Government's Exhibit 3. Can you take
16 the checks out of the packet and examine it, please?

17 A (The witness complies.)

18 Q Now, did there come a time that benefits
19 were paid on Mrs. Baker's claim for surviving widows
20 and surviving children benefits?

21 A Yes.

22 Q When were the first checks paid on those
23 two claims?

24 A It looks like July 25th, 1975.

25 Q Can you tell us the amounts of the two checks?

Salzman - direct/cross

90

A For the children were \$4,753.00; for Rosemarie Baker it was \$1,205.60.

Q And thereafter were monthly payments made?

A After that monthly payment.

Q When were the last monthly payments you have there?

A February 3rd, 1976.

MR. KRAMER: Thank you, very much, we have no further questions.

THE COURT: What was the amount of the monthly payments?

THE WITNESS: For the children, it was \$509.50; for Rosemarie Baker it was \$101.90.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. BARAHAL:

Q Mrs. Salzman, this application was made in June of 1975; isn't that correct?

A Right.

Q That was made by Rosemarie Baker?

A Right.

Q And this was the first claim that was made with Social Security; isn't that correct?

A I can't tell from these papers.

Salzman - cross

91

Q But, in any event, the first payment that was made was in July of 1975; isn't that correct?

A On these applications.

Q And it was based upon the allegation that her husband had died in September of 1974; isn't that correct?

A Let me just check the date of that. Yes.

MR. BARAHAL: I have no further questions.

THE COURT: Any redirect?

MR. KRAMER: No redirect.

THE COURT: Thank you, Miss Salzman. You may step down.

(Witness excused.)

MR. KRAMER: We call Mrs. Carpenter as our next witness.

THE COURT: Step up, please.

(Whereupon, the following side bar discussion took place:)

MR. KRAMER: Mrs. Carpenter is simply going to testify to a chain - - a change of possession of a certain credit card, the TWA credit card; she's a matron at the jail where the Bakers were lodged, when they were first arrested; she will state she took from Mrs. Baker a pocketbook and

Colloquy

200

1
2 further questions.

3 THE COURT: Cross-examination?

4 MR. BARAHAL: No questions.

5 MR. KRAMER: The Government rests.

6 THE COURT: Thank you, Mrs. Salzman.

7 The Government rests.

8 I think, at this point, we will take a brief
9 recess, five minutes.

10 I'll ask the jury to retire to the jury room.

11 Please do not discuss the case.

12 MR. BARAHAL: Your Honor, I would have a
13 motion at this stage - -

14 THE COURT: Wait until the door is closed.

15 (Whereupon, the jury leaves the courtroom.)

16 THE COURT: All right, Mr. Barahal.

17 MR. BARAHAL: At this stage, your Honor, I
18 would move for a judgement of acquittal.

19 I would point out to your Honor that the
20 charge in the indictment as it relates to this
21 defendant states that commencing on or before the
22 15th day of December, 1974 and continuing up to
23 and including the 9th day of April, 1976 - -

24 MR. KRAMER: Your Honor, for this moment,
25 may I interrupt?

1
2 important and I think it's sufficient for it to
3 go to the jury.

4 Therefore, I will deny the motion for judge-
5 ment of acquittal.

6 We will resume, I said, for the jury, 2:00
7 o'clock, but I'm told I have three pleas at 1:30
8 and I also have a judges meeting in about two
9 minutes, which includes a sentence conference, so
10 I'm not going to get to these pleas until a quarter
11 to two, so with luck with can resume at 2:15, but
12 you don't have to be back before that time.

13 MR. BARAHAL: Your Honor, with respect to
14 the requests to charge, I will have written re-
15 quests to charge to submit. I will also - - I
16 wish to object to some of the Government's requests
17 to charge orally.

18 THE COURT: You're going to rest right after
19 lunch?

20 MR. BARAHAL: I am going to rest when the
21 Government rests.

22 THE COURT: Well, they've still got to read
23 that testimony into evidence.

24 We'll have to review the charges then and
25 then proceed with the summations; except for

Colloquy

305

MR. BARAHAL: Your Honor, I would, at this time, move that the verdict be set aside and that the motion for judgement of acquittal be granted.

THE COURT: The motion is denied.

Thank you, gentlemen.

* * * *

I N D E X

<u>EXAMINATION</u>	<u>OF</u>	<u>BY</u>	<u>PAGE</u>
Direct - Gamertsfelder		Mr. Kramer	52 - 70
Cross - Gamertsfelder		Mr. Barahal	70 - 72
-	-	-	-
Direct - Kelly		Mr. Kramer	72 - 75
Cross - Kelly		Mr. Barahal	75 - 76
-	-	-	-
Direct - Thiel		Mr. Kramer	76 - 78
-	-	-	-
Direct - Barone		Mr. Kramer	78 - 83
Cross - Barone		Mr. Barahal	83 - 84
Redirect - Barone		Mr. Kramer	85 - 85
-	-	-	-
Direct - Salzman		Mr. Kramer	85 - 90
Cross - Salzman		Mr. Barahal	90 - 91
-	-	-	-
Direct - Carpenter		Mr. Kramer	93 - 96
-	-	-	-

1 but, if the husband was the person who saw the
2 brakes were bad, and thereby enabled his wife
3 to cause the injury, then he would be respons-
4 ible. What we have here is not the situation of
5 a wife or a husband going off and doing an iso-
6 lated act and the Government suddenly coming in
7 and saying to the other spouse, "you're respon-
8 sible." We have a continuing course of conduct.
9 We have a situation of a husband ordering merchan-
10 dise in his wife's name, with no intent to pay for
11 it and the wife receiving this merchandise on a
12 regular basis and allowing this to go on and
13 benefiting for the merchandise. She's responsible,
14 as is her husband. She's allowing her husband to
15 commit a fraud here. There's no question that
16 Mr. Baker was the key to the wife's fraud. With-
17 out him being dead, she couldn't get anything.
18 That's the key to the Government's case, and we
19 submit that is why we require you to come back
20 with a guilty verdict.
21

22 Thank you.

23 (Whereupon, the Court charged the jury as
24 follows:)

25 PRATT, J.: Members of the jury: We are

1
2 now at the stage of the trial where you are about
3 to undertake your final function as jurors. Your
4 duty is a serious and important one. In perform-
5 ing it you actively share with me with responsib-
6 ility of administering justice according to law
7 and the evidence in this case. Your oath as jurors
8 obliges you to discharge this final task in an at-
9 titude of complete fairness and impartiality, and
10 as emphasized by me, when you were selected as
11 jurors, without bias or prejudice for or against
12 the Government or the defendant as parties to this
13 contrpversy. You must not permit yourselves to
14 be governed by sympathy or any other consideration
15 which is not founded in the evidence and in these
16 instructions on the law.

17 The case is important to the Government,
18 since the enforcement of the criminal law is of
19 prime importance to the welfare of the community.

20 Obviously, it is equally important to the
21 defendant, who is charged with a serious crime
22 and has the right to receive a fundamentally fair
23 trial and the community has an interest in that too.

24 The fact that the Government is a party en-
25 titles it to no greater consideration than that

Charge

267

1
2 accorded to any other party to a litigation. By
3 the same token it is entitled to no less consider-
4 ation.

5 All parties, the Government and individuals
6 alike, stand as equals before the bar of justice.

7 In this charge I shall describe for you first
8 the general principles of applicable to all criminal
9 trials, then the nature of the charges in this case,
10 then the specific rules of law which are applicable
11 to the charges, and finally something about how you
12 should reach a verdict.

13 Your final role is to decide and pass upon
14 the fact issues in the case.

15 You are the sole and exclusive judges of the
16 facts.

17 You determine the weight of the evidence;
18 you apprise the credibility of the witnesses; you
19 draw the reasonable inferences from the evidence.

20 My function now is to instruct you as to
21 the law and it is your duty to accept these in-
22 structions as to the law and to apply them to the
23 facts as you may find them.

24 With respect to any fact matter, it is your
25 recollection and yours alone that governs. Anything

Charge

263

1
2 that counsel, either for the Government or the
3 defense may have said with respect to matters in
4 evidence, whether during the trial, in a ques-
5 tion, in argument or in summation is not to be
6 substituted for your own recollection of the evi-
7 dence.

8 So, too, as to any matter in evidence, any-
9 thing that I may have said during the trial or
10 may refer to during the course of these instruc-
11 tions is not to be taken in place of your own re-
12 collection. Keep in mind, at all times, that I
13 have no view of the guilt or innocence of this de-
14 fendant.

15 Now, the indictment here is merely an accus-
16 ation. It's a charge. It's not evidence of the
17 defendant's guilt.

18 Since the defendant has pleaded not guilty,
19 the Government has the burden of proving the charge
20 against the defendant beyond a reasonable doubt.

21 The defendant does not have to prove his
22 own innocence. On the contrary, the defendant is
23 presumed to be innocent of the accusations con-
24 tained in the indictment.

25 This presumption of innocence was in his

1
2 favor at the start of the trial, it continued in
3 his favor throughout the trial and it is in his
4 favor even now as I instruct you and it remains
5 in his favor during the course of your deliveries
6 in the jury room. That presumption is re-
7 moved only if and when you are satisfied that the
8 Government has sustained it's burden of proving
9 the defendant's guilt beyond a reasonable doubt.

10 If the Government has failed to sustain it's
11 burden, then the presumption of innocence alone is
12 sufficient to acquit him.

13 Now, I've used the term reasonable doubt.
14 What is a reasonable doubt? The words almost de-
15 fine themselves, that there is a doubt founded in
16 reason and arising out of the evidence in the case
17 or the lack of evidence. It is a doubt which a
18 reasonable person has, after weighing all the evi-
19 dence. Reasonable doubt is a doubt which appeals
20 to your reason, to your judgement, to your common
21 sense and your experience. It is not capricious,
22 whim, speculation, conjecture or suspicion. It
23 is not an excuse to avoid the performance of an
24 unpleasant duty. It is not sympathy for a de-
25 fendant.

1
2 If, after a fair and impartial consideration
3 of all the evidence you can candidly and honestly
4 say you are not satisfied of the guilt of a de-
5 fendant, that you do not have an abiding convic-
6 tion of his guilt - - in sum, if you have such a
7 doubt as would cause you, as prudent persons, to
8 hesitate before acting in matters of importance to
9 yourselves, then you have a reasonable doubt, and
10 in that circumstance it is your duty to acquit.

11 On the other hand, if, after such an impart-
12 ial and fair consideration of all the evidence you
13 can candidly and honestly say you do have an abid-
14 ing conviction of the defendant's guilt, such a
15 conviction as you would be willing to act upon in
16 important and weighty matters in the personal af-
17 fairs of your own life, then you have no reason-
18 able doubt and under such circumstances it is your
19 duty to convict.

20 Reasonable doubt does not mean a positive
21 certainty or beyond all possible doubt. If that
22 were the rule, few persons, however guilty they
23 might be, would be convicted.

24 Since it is practically impossible for a
25 person to be absolutely and completely convinced

1 of any controverted fact, the law in a criminal
2 case is that it is sufficient if the guilt of a
3 defendant is established beyond a reasonable doubt,
4 not beyond all possible doubt.
5

6 Nor is it the Government's burden to prove
7 each and every bit of evidence to be true beyond
8 a reasonable doubt. It's burden is to prove be-
9 yond a reasonable doubt each and every essential
10 element of the crime charged.

11 I will say more about the elements of this
12 crime in a few moments.

13 Reasonable doubt may arise from the failure
14 of the Government to produce evidence.

15 The defendant is not obligated to present any
16 evidence in his favor. He has the right to rely on
17 the failure of the Government to prove it's case.
18 He may also rely on evidence brought out on cross-
19 examination of witnesses called by the Government.

20 On the other hand, the defendant has the
21 power to subpoena anyone in support of his position,
22 if he so chooses, and he may exercise that power if
23 he so chooses.

24 I've used the terms "inference and presumption."
25 An inference is a conclusion which reason and common

Charge

272

1
2 sense lead you to draw from the facts which have
3 been established by the evidence in the case. It
4 is the jury which may draw such inferences.

5 A presumption is a conclusion which the law
6 requires the jury to make and continues only so
7 long as it is not overcome or outweighed by evi-
8 dence in the case to the contrary. But, unless
9 and until the presumption is outweighed by evi-
10 dence, the jury is bound to find in accordance
11 with the presumption - - for example, the presump-
12 tion of innocence to which I have already referred.

13 Evidence is the method by which a disputed
14 fact is proved or disproved.

15 Evidence is generally classified as direct
16 or circumstantial.

17 Direct evidence is the testimony of a wit-
18 ness as to what that witness saw or heard, that is
19 what he knows of his own knowledge.

20 Circumstantial evidence is where facts that
21 are established from which, in terms of common ex-
22 perience, one may logically infer other facts that
23 are sought to be established.

24 What is the evidence in the case which you
25 may consider here? It consists of:

Charge

273

1
2 1. Sworn testimony of witnesses, regard-
3 less of who may have called them;

4 2. exhibits that were received in evidence,
5 regardless of who may have produced them;

6 3. facts which may have been admitted or
7 stipulated.

8 Now, what is not evidence? First, the state-
9 ments or arguments of counsel, as I have told you,
10 made in the opening statement, summation or during
11 the trial. They are not evidence.

12 Secondly, statements made by me are not evi-
13 dence.

14 Thirdly, any evidence which I have directed
15 be stricken from the record.

16 Fourthly, questions to which an objection
17 has been sustained. The question is not evidence
18 and you're not to speculate on what the answer
19 might have been, had I permitted the answer to
20 come in or to stand.

21 Now, with respect to the charge in this case:
22 It is charged in the indictment that commencing on
23 or before the 15th day of September, 1974, and con-
24 tinuing up to and including the 9th day of April,
25 1976, both dates being approximate and inclusive,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

within the Eastern District of New York and elsewhere, the defendant George Baker and a co-conspirator, Rosemarie Baker, along with other persons unknown, did agree, combine and conspire to defraud the United States and an agency thereof, the Social Security Administration, by obtaining and aiding in obtaining of payments of false, fictitious and fraudulent claims, in that they did claim payments and did obtain payments on the claim of Rosemaire Baker, under title 42 of the United States Code, section 402, knowing that such claim was false, fictitious and fraudulent, and that they were not entitled to such payments.

Title 42 of the United States Code, section 402, is the section which provides for the Mother's Insurance Benefits and Surviving Child's Insurance benefits, which were described to you in the testimony.

It is charged in the indictment that a number of overt acts were committed for the purpose of effecting the objectives of the conspiracy. These include:

1. That on or about the 15th day of September, 1974, the defendant, George Baker, sailed a

1
2 boat to the Fire Island Inlet and abandoned boat
3 in the water.

4 2. That on or about the 15th day of June,
5 1975 the co-conspirator, Rosemarie Baker, did
6 knowingly and willfully make false, fictitious
7 and fraudulent representations to the Social
8 Security Administration that husband, the defen-
9 dant, George Baker, was deceased, when, in fact,
10 she knew him to be alive.

11 3. That on eight occasions the co-conspir-
12 ator, Rosemarie Baker received benefit checks
13 issued by the Social Security Administration.

14 Now, the charge against the defendant is
15 based upon a violation of title 18 of the United
16 States Code, section 236. That section provides,
17 and I quote: "Whoever enters into any agreement,
18 combination or conspiracy to defraud the United
19 States, or any department or agency thereof, by
20 obtaining or aiding to obtain the payment or al-
21 lowance of any false, fictitious or fraudulent
22 claim shall be guilty of a crime."

23 Now, to convict the defendant, George Baker,
24 of this offense with which he is charged in the
25 indictment, the Government must prove beyond a

1
2 reasonable doubt four elements: The first is that
3 the conspiracy to defraud the Government was will-
4 fully formed between George Baker and the co-con-
5 spirator, Rosemarie Baker.

6 The second element is that George Baker
7 willfully participated in the conspiracy.

8 The third is that one of the conspirators
9 thereafter, knowingly committed at least one of
10 the overt acts charged in the indictment. The
11 fourth is that the overt act was knowingly done in
12 furtherance of some object or purpose of the con-
13 spiracy.

14 The indictment charges that the conspiracy
15 began before September 15th, 1974 and continued
16 up to April 9th, 1976, the exact dates are not
17 critical.

18 If you find, beyond a reasonable doubt, that
19 the conspiracy charged existed at any time during
20 that period. The conspiracy is a combination of
21 two or more persons by concerted action, to ac-
22 complish some unlawful purpose or to accomplish
23 some lawful purpose by unlawful means. A con-
24 spiracy is a kind of partnership in criminal pur-
25 poses, in which each member becomes the agent of

every other member.

The gist of the offense is a combination or agreement to disobey or to disregard the law.

The mere similarity of conduct among various persons and the fact they may have associated with each other and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be or the details thereof or the means by which the object or purpose was to be accomplished. What the evidence in the case must show, beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

A person cannot conspire with himself and, therefore, you cannot find the defendant guilty,

1
2 unless you find, beyond a reasonable doubt, that
3 he participated in a conspiracy with Mrs. Baker.

4 The evidence in the case need not establish
5 that all the means or methods set forth in the
6 indictment were agreed upon to carry out the al-
7 leged conspiracy; nor that all means or methods,
8 which were agreed upon, were actually used or put
9 into operation.

10 What the evidence in the case must establish
11 beyond a reasonable doubt is that the alleged con-
12 spiracy was knowingly formed and that one or more
13 of the means or methods described in the indict-
14 ment were agreed upon to be used, in an effort to
15 effect or accomplish some object or purpose of the
16 conspiracy, as charged in the indictment; that the
17 defendant, George Baker and his wife were know-
18 ingly members of the conspiracy as charged.

19 A person may become a member of a conspiracy
20 without full knowledge of all the details of the
21 conspiracy.

22 On the other hand, a person who has no know-
23 ledge of a conspiracy, but happens to act in a
24 way which furthers some object or purpose of a
25 conspiracy, does not thereby become a conspirator.

1
2 Before the jury may find the defendant or
3 his wife became a member of the conspiracy, the
4 evidence in the case must show beyond a reason-
5 able doubt that the conspiracy was knowingly form-
6 ed, that is in this case, that the defendant and
7 his wife willfully participated in the unlawful
8 plan with the intent to advance or further some
9 object or purpose of the conspiracy.

10 To act or participate willfully means to
11 act or participate voluntarily and intentionally
12 and with specific intent to do something the law
13 forbids or with specific intent to fail to do
14 something the law requires to be done. That is
15 to say, to act or participate with the bad pur-
16 pose either to disobey or to disregard the law.

17 So, if the defendant or his wife, with the
18 understanding of the unlawful character of a plan,
19 knowingly encourages, advises or assists, for the
20 purpose of furthering the undertaking or scheme,
21 he or she thereby becomes a willful participant,
22 a conspirator.

23 In determining whether or not the defendant
24 was a member of the conspiracy, the jury is not
25 to consider what any other person may have said

1
2 or done. That is to say, the membership of the
3 defendant in the conspiracy must be established
4 by the evidence in the case as to his own con-
5 duct, what he himself willfully said or did.

6 Similarly, as to his wife, Mrs. Baker,
7 whether she - - in determining whether she was
8 a member of the conspiracy, you are not to con-
9 sider what other persons may have said or done.
10 Her membership must be established by the evidence
11 in the case, as to her own conduct, what she her-
12 self willfully said or did.

13 The existence of the conspiracy and the de-
14 fendant's participation in it may be shown by cir-
15 cumstantial evidence, by which we mean the exist-
16 ence of facts and circumstances from which the ex-
17 istence of other facts and circumstances may rea-
18 sonably be inferred.

19 Explicit language or words are not required
20 to indicate assent or attachment to a conspiracy.
21 The essence of the conspiracy is the common plan
22 or design.

23 In determining whether there has been an un-
24 lawful agreement, you may judge acts and conduct
25 of the alleged co-conspirators which are done to

Charge

231

1
2 carry out an apparent criminal purpose.

3 If you find circumstances of secrecy or
4 attempts to conceal the true nature of a trans-
5 action, these may be considered by you as cir-
6 cumstantial evidence of criminal intent.

7 It is necessary that you find beyond a rea-
8 sonable doubt that the defendant participated in
9 the conspiracy with knowledge of at least some of
10 it's purposes and with intent to aid the accomplish-
11 ment of it's unlawful ends. A single act may be
12 enough to draw the defendant within the ambit of
13 the conspiracy, provided you are convinced, beyond
14 a reasonable doubt, that the defendant knew of
15 the conspiracy and associated himself with it.

16 Whenever it appears, beyond a reasonable
17 doubt, from the evidence in the case that a con-
18 spiracy existed and that the defendant was one of
19 the members, along with Mrs. Baker, then the state-
20 ments thereafter knowingly made and the acts there-
21 after knowingly done by Mrs. Baker may be consider-
22 ed by you as evidence in the case as to the de-
23 fendant, even though the statements and acts may
24 have occurred in the absence or without the know-
25 ledge of the defendant, provided such statements

1 and acts were knowingly made and done during the
2 continuance of this conspiracy and in furtherance
3 of some object or purpose of the conspiracy.
4

5 Otherwise, any admission of incrimintory state-
6 ment made or done outside of court by one person
7 may not be considered as evidence against any
8 person who is not present and heard the statement
9 made or saw that done.

10 Normally, in considering evidence as to con-
11 spiracy, the jury should first determine whether
12 or not the conspiracy existed as alleged in the
13 indictment and then determine whether or not the
14 defendant willfully became a member of the con-
15 spiracy.

16 In this case, however, only two conspirators
17 are alleged, so that until both the defendant and
18 his wife became members, there could be no con-
19 spiracy, since a conspiracy requires that at least
20 two people combine to commit an unlawful act.

21 If it appears, beyond a reasonable doubt,
22 from the evidence in the case, that the defendant
23 and his wife willfully formed the conspiracy al-
24 leged in the indictment and that thereafter either
25 or both of them knowingly committed and in further-

1
2 ance of some object or purpose of the conspiracy,
3 one or more of the overt acts charged, then the
4 success for failure of the conspiracy to accomplish
5 the common object or purpose is immaterial.

6 An overt act is any act knowingly committed
7 by one of the conspirators in an effort to effect
8 or accomplish some object or purpose of the con-
9 spiracy. The overt act need not be criminal in
10 nature, if considered separately and apart from
11 the conspiracy.

12 Now, the Government must prove every element
13 of the crime charged beyond a reasonable doubt.
14 If the Government fails as to any element, you
15 must acquit.

16 The fact that one element of the crime may
17 or may not exist has no bearing upon any other
18 element of the crime.

19 You may not infer, solely, from the existence
20 of one element of the crime, if you conclude that
21 the element has been established, the existence of
22 any other element.

23 If any other element of the crime has not
24 been established beyond a reasonable doubt, your
25 verdict must be not guilty.

1
2 On the other hand, you must convict a de-
3 fendant if each of the elements of the crime has
4 been proved beyond a reasonable doubt.

5 A difficult aspect of any juror's duty is
6 to determine the credibility of the witnesses and
7 to weigh their testimony.

8 You, the jurors are the sole judges of the
9 credibility of the witnesses. Credibility refers
10 to the believability of their testimony and the
11 weight their testimony deserves.

12 Your determination of the issue of credib-
13 ility very largely must depend upon the impression
14 that a witness made upon you, as to whether or not
15 he was telling the truth or giving you an accurate
16 version of what occurred.

17 When you walk in the door of this courtroom
18 and sit in the jury box, while the trial is going
19 on, when you are deliberating in the jury room,
20 you have your common sense, your good judgement
21 and your experience with you. You decide whether
22 or not a witness is straightforward and truthful;
23 whether the witness attempted to conceal anything;
24 whether the witness has a motive to testify false-
25 ly; whether there is any reason why a witness might

1
2 color his testimony.

3 In other words, what you try to do, to use
4 the vernacular, is to size a person up, just as
5 you would do, in any important matter where you
6 were undertaking to determine whether or not a
7 person is truthful, candid and straightforward.

8 Scrutinize the testimony given, the circum-
9 stances under which each witness testified and
10 every matter in evidence which tends to show
11 whether a witness is worthy of belief.

12 The ultimate question for you to decide, in
13 passing upon credibility is: Did the witness tell
14 the truth here before you as to the essential mat-
15 ters? If you find that any witness willfully testi-
16 fied falsely as to any material fact, you have a
17 right to reject the testimony of that witness in
18 it's entirety or you may accept that part or por-
19 tion which you believe to be credible.

20 The fact that some Government witnesses
21 were Government employees or police officers does
22 not entitle their testimony to any greater weight
23 or consideration than that afforded to any other
24 witness in the case. You will evaluate their
25 credibility the same way you do that of any other

1
2 witness.

3 Now, the law does not compel a defendant
4 in a criminal case to take the witness stand to
5 testify and no presumption of guilt may be raised
6 and no inference of any kind may be drawn from
7 the failure of a defendant to testify.

8 As stated before, the law never imposes
9 upon a defendant in a criminal case the burden or
10 duty of calling any witnesses or producing any
11 evidence.

12 If any facts in the case permit inferences
13 which are equally consistent with guilt and with
14 innocence, you may not consider those facts as
15 evidence of guilt. But, if you are satisfied from
16 the evidence, as a whole, that the defendant is
17 guilty beyond a reasonable doubt, you should find
18 a verdict of guilty.

19 I have sought not to comment on the evi-
20 dence in this case, in any detail or to give any
21 impression, as to my own view, if I have one, of
22 the relative weight of the evidence. If I have
23 done so, inadvertently, however, I ask you to
24 disregard it entirely, because you are the sole
25 judges of the facts.

Charge

287

1 From time to time, in the course of the
2 trial, objections have been made and rulings on
3 the evidence have been given. You are to draw
4 no inferences from the comparative frequency of
5 objections from one or the other side or from the
6 comparative record in having objections sustained.
7 Where an objection to a question has been sustain-
8 ed, disregard the question and draw no inferences
9 from it's wording about what the answer might have
10 been. Where an objection is overruled, on the
11 other hand, evidence then received has no special
12 weight just because it was unsuccessfully objected
13 to.
14

15 Your duty is to decide the case solely upon
16 the evidence, to weigh the evidence in the case
17 and to determine the guilt or innocence of the
18 defendant, solely upon the basis of such evidence
19 and these instructions.

20 Your verdict must be unanimous.

21 Each of you, as jurors, is entitled to your
22 own opinion, but each of you should exchange views
23 with your fellow jurors. That is the very purpose
24 of jury deliberations, to discuss and to consider
25 the evidence; to listen to the arguments of your

1
2 fellow jurors; to present your own individual
3 views; to consult with one another and to reach
4 an agreement based solely and wholly on the evi-
5 dence, if you can do so without violence to your
6 own individual judgement.

7 Each of you must decide the case for your-
8 self after consideration with your fellow jurors,
9 but you should not hesitate to change an opinion
10 which, after discussion with your fellow jurors,
11 appears to you to be erroneous. However, if
12 after carefully considering all the evidence and
13 the arguments of your fellow jurors, you enter-
14 tain a conscientious view that differs from the
15 others, you are not to yield your judgement simply
16 because you are outnumbered.

17 Your final vote must reflect your conscient-
18 ious view as to how the issue should be decided.

19 The charge here is most serious. The just
20 determination of this case is important to the
21 public; it is equally important to this defendant.

22 Under your oath as jurors, you must decide
23 this case without fear or favor and solely in
24 accordance with the evidence and the law.

25 If the Government has failed to carry it's

1
2 burden as to the defendant, your sworn duty is to
3 acquit.

4 If it has carried it's burden as to the
5 defendant, you must not flinch from your sworn
6 duty, you must convict.

7 If you wish to look at any of the exhibits,
8 you may ask for them.

9 If you wish to have some of the testimony
10 repeated, you will make that request, and I will
11 call you back into the courtroom and have the re-
12 porter locate those portions you desire to hear
13 and read them to you.

14 When you retire to the jury room, your first
15 duty will be to elect your foreman or forelady,
16 who will preside over your deliberations.

17 During those deliberations, you should assume
18 the attitude of judges of the facts, rather than
19 partisans or advocates. In that way, you will be
20 making a high contribution to the administration
21 of justice.

22 You must report your verdict, as I told you
23 before, it must be unanimous. When you have reach-
24 ed a verdict the marshal will be available outside
25 the jury room, you tell him that you have reached

1 a verdict; do not tell him what the verdict is;
2 that will be announced when you return to the
3 courtroom.
4

5 If you have any questions which you wish to
6 have answered, you will let me know by telling
7 the marshal.

8 There will now be a short recess, during
9 which counsel will renew my charge with me, to
10 make certain there is nothing which has been o-
11 mitted or misspoken.

12 As a matter of fact, I think we can avoid
13 the recess.

14 I will speak to counsel at the side bar.
15 Just be patient for a moment.

16 (Whereupon, the following side bar dis-
17 cussion occurred:)

18 THE COURT: Yes, Mr. Barahal?

19 MR. BARAHAL: I believe everything has been
20 covered.

21 MR. KRAMER: There's one request, which I
22 neglected to ask. I don't know whether the Court
23 feels it's appropriate to put it in at this point,
24 that is a charge on false exculpatory statements
25 and what weight the jury can give them; referring

UNITED STATES OF AMERICA

Appellee - Plaintiff

against

GEORGE R. BAKER

Appellant - Defendant

~~RECEIVED~~

Docket No. 76-1526

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF NASSAU

SS.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 86 Fox Boulevard,
Massapequa, New York 11758

That on December 20, 19 76 deponent served the annexed Brief for
Appellant and Appendix
on the United States Attorney
attorney(s) for United States of America
in this action at 225 Cadman Plaza East, Brooklyn, New York 11201
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me December 20, 1976.

Paul Barahal

Barbara Barahal

The name signed must be printed beneath

BARBARA BARAHAL

PAUL BARAHAL
Notary Public, State of New York
No. 3743-10000 Nassau County
Commission Expires March 30, 1978